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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Dr. 1-B
Phone:	615-532-0179
Email:	troy.haley@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Troy Haley
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Room			
Address 2:	220 French Landing Drive, 1-A			
City:	Nashville, TN			
Zip:	37243			
Hearing Date :	08/29/17			
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> X	CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

☒ X Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0800-02-01	General Rules of the Workers' Compensation Program
Rule Number	Rule Title
0800-02-01-.01	Scope of Rules
0800-02-01-.02	Definitions
0800-02-01-.03	Designation of Insurance Rate Service Organization

0800-02-01-.04	Required Proof of Coverage Filings
0800-02-01-.05	Employer Claims Reporting Requirements
0800-02-01-.06	Medical Panels
0800-02-01-.07	Claims Form and Claims Resolution Filing Requirements
0800-02-01-.08	Additional Forms
0800-02-01-.09	Medical Reports
0800-02-01-.10	Civil Penalties
0800-02-01-.11	Records/Copies
0800-02-01-.12	Required Posting

CHAPTER 0800-02-01
GENERAL RULES OF THE WORKERS' COMPENSATION PROGRAM
Amendments

Chapter 0800-02-01 General Rules of the Workers' Compensation Program is amended by deleting the prior rule and replacing it with the following:

0800-02-01-.01 Scope of Rules

This chapter shall apply to all employees, employers, adjusting entities, and providers of services related to workers' compensation claims subject to the Tennessee Workers' Compensation Act (the Act).

Authority: T.C.A § 50-6-101 et seq., Title 50, Chapter 10. Administrative History: Original rule certified June 10, 1974. Amendment filed September 19, 1974; effective October 19, 1974. Repealed and new rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed _____; effective _____.

0800-02-01-.02 Definitions

The terms contained within these rules that are not specifically defined within these rules shall have the same definitions as those established by the Workers' Compensation Act and the case law interpreting it. When any terms that are used in these rules differ from the definition established by the Act, the definition established by the Act shall govern.

- (1) "Adjusting entity" means a trade or professional association, managing general agency, pool, third party administrator and/or insurance company licensed to write workers' compensation insurance in Tennessee and shall also mean a self-insured employer or group self-insured employers possessing a valid certificate of authority from the commissioner of commerce and insurance pursuant to T.C.A §50-6-405.
- (2) "Adjuster" or "claims handler" means a representative of an adjusting entity who investigates workers' compensation claims, files or causes claims forms to be filed with the Bureau, commences benefits, and/or makes settlement recommendations based on the insured's liability on behalf of a self-insured employer, trade or professional association, third party administrator, and/or insurance company.
- (3) "Administrator" shall have the same definition of "Administrator" as in T.C.A. §50-6-102.
- (4) "Bureau" means the Tennessee Bureau of Workers' Compensation as defined in Tenn. Code Ann. § 50-6-102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only, pursuant to Tenn. Code Ann. § 4-3-1409.
- (5) "Claimant" means an individual who is claiming benefits under the Act.
- (6) "Electronic Data Interchange" or "EDI" means the electronic communication method that provides standards for exchanging data via any electronic means. The term "EDI" encompasses the entire electronic data interchange process, including the transmission, message flow, document format, and software used to interpret the documents using the standards established by the IAABC and the Release Version accepted by the Bureau at the time of the filing.

- (7) "Employer" shall have the same definition of "Employer" as in T.C.A. §50-6-102.
- (8) "File" means to successfully submit claims information in the manner required by Bureau Rules. Success is achieved when claims information is filed in the manner required by the Bureau Rules and its acceptance is acknowledged by the Bureau. Success is not achieved if the Bureau receives and its acceptance is not acknowledged by the Bureau or if the Bureau subsequently rejects or returns claims information that has been submitted but is incomplete or fails to use the correct form or formats.
- (9) "Form" means the original document as is available on the Bureau's website on the date of the filing.
- (10) "IAIABC" means the International Association of Industrial Accident Boards and Commissions.
- (11) "Insured" shall have the same definition of "Employer" as in T.C.A. §50-6-102.
- (12) "Rate Service Organization" shall have the same definition of "Rate Service Organization as in T.C.A. §56-5-102.

Authority: T.C.A §§ 50-6-101 et seq. 50-6-102 and 56-5-102. Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Amendments filed March 25, 2013; effective June 23, 2013. Repeal and new rule filed _____; effective _____.

0800-02-01-.03 Designation of Insurance Rate Organization

The Insurance Rate Service Organization designated for purposes that include the filing of insurance policy provisions and coverages and the determination of job classifications for applicable Bureau Rules shall be posted on the Bureau's website.

Authority: T.C.A §§ 56-5-120, 56-5-110, 50-6-901, 56-5-320. New rule filed _____; effective _____.

0800-02-01-.04 Required Proof of Coverage Filings

- (1) An adjusting entity must file appropriate evidence with the designated Rate Service Organization of an employer's procurement or renewal of workers' compensation insurance within thirty (30) calendar days of the procurement or renewal. Failure to timely file the appropriate evidence would subject the offending party to a potential penalty as described in 0800-02-01-.10(2) below.
- (2) An adjusting entity must file appropriate evidence, with the designated Rate Service Organization, of the cancellation of an employer's workers' compensation insurance within one (1) working day of the cancellation. Failure to timely file the appropriate evidence would subject the offending party to a potential penalty as described in 0800-02-01-.10(2) below.
- (3) Self-insured employers are exempt from the requirements of paragraphs (1) and (2) of this subsection, but must file evidence with the Department of Commerce and Insurance in accordance with T.C.A §50-6-405(a)(2).
- (4) Not later than five (5) business days of the date of the procurement and each subsequent renewal of a policy, the adjusting entity is required to mail a copy of the Notice of Employer Rights and Responsibilities in a Workers' Compensation Claim and a copy of the Tennessee Workers' Compensation Posting Notice via electronic mail or first class US Mail to the employer at the address provided on the policy. These documents, produced by the Bureau, provide information regarding employer and employee rights, responsibilities, duties, and obligations under the Act. Failure to timely mail a required form would subject the offending party to a potential penalty as described in 0800-02-01-.10(2) below.

Authority: T.C.A §§ 50-6-118, 50-6-405, 50-6-406, and 50-6-402. Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed _____; effective _____.

0800-02-01-.05 Employer Claims Reporting Requirements

- (1) An employer must accept any notice of a claim for workers' compensation benefits from any employee alleging an injury or the employee's representative and must provide a copy of the Beginner's Guide to Tennessee Workers' Compensation, available on the Bureau's website, to the injured employee contemporaneously with the provision of the panel described in 0800-02-01-.06.
- (2) In order to ensure that Workers' Compensation claims are acted on promptly, employers shall report all known or reported accidents or injuries to their adjusting entity within one (1) business day of knowledge of injury.
- (3) Unless otherwise specifically authorized by law, employers are prohibited from paying any benefits that are due because of a work-related injury in any manner that unlawfully shifts the responsibility away from the adjusting entity or conceals the occurrence of the injury or the extent of payments for benefits.
- (4) To assist the Bureau in its efforts to implement and enforce any of its programs rules in a timely and efficient manner, a party shall provide the Bureau with any requested and relevant information. When the request includes specific instructions, only the information that complies with those instructions shall be sent.

Authority: T.C.A §§ 50-6-207, 50-6-114, 50-3-701, 50-6-201, 50-6-128, and 50-6-419. Repeal and new rule filed _____; effective _____.

0800-02-01-.06 Medical Panels

- (1) The employer shall provide the employee an appropriate initial panel of physicians on an Employee Choice of Physician Form C-42 upon report of a workplace injury, other than those requiring emergency care, as defined in the workers' compensation statutes.
 - a. The panel shall list the names of medical providers made available by the employer to treat the injured employee.
 - b. A provider, physician or specialty practice group must be qualified, willing and able to treat in a timely manner the nature of the injury or condition reported in order to be listed on a panel.
 - c. An injured employee seeking medical treatment shall select one of the listed providers to become the treating physician.
- (2) In any case where the employer fails to provide an appropriate initial panel of physicians to the employee within three (3) business days from the date the employer has notice of an injury, or provides a panel of physicians to the injured employee that does not meet statutory requirements, the employer may be assessed a civil penalty as provided in 0800-02-01-.10.
- (3) The employer shall immediately provide proper emergency assistance (i.e. EMT, ambulance, etc.) for any workplace injury that causes the need for emergency care. After the injured employee's medical condition has stabilized, the employer shall follow the requirements of subsection (1) above, the same as any alleged workplace injury not requiring emergency care.
- (4) Employers may direct injured employees to onsite, in-house or other similar employer-sponsored medical providers prior to providing an initial panel of physicians for an examination as allowed in T.C.A. §50-6-204(d)(1). Having such a provider examine the injured employee does not satisfy nor alleviate the requirement for providing an appropriate panel within the three (3) business days referenced in 0800-02-01-.06(2) above. Employers may list that employer-sponsored medical provider as an option on the medical panel provided the provider meets the statutory requirements; however, the employee has the ultimate decision regarding which physician is selected.
- (5) Walk-in clinics, urgent care facilities and other similar providers may be an option on a medical panel if the provider is staffed by at least one physician and the name of the staff physician or medical director is also indicated on the panel. Associated walk-in clinics, urgent care facilities and other similar providers may be

listed on the same medical panel to the extent allowed by law provided different staff physicians or medical directors are named for each different location.

- (6) When a specialty practice group, consisting of multiple physicians willing to treat workers' compensation employees, is provided as an option on any panel provided by the employer and chosen by the employee, the employee will have the final choice as to which appropriate physician from within that group shall become the authorized treating physician.
- (7) Nurse Practitioners, Physician Assistants and other mid-level practice extenders under the supervision, direction and ultimate responsibility of a licensed physician accountable to the Board of Medical Examiners may provide medical treatment ordered by an attending physician to an injured employee in accordance with their licensing. Notwithstanding this use of practice extenders in treatment settings, only the supervising physician may be listed on an Employee Choice of Physician Form C-42, may determine medical causation regarding the injury, may issue a permanent impairment rating, and may determine the date of an injured employee's maximum medical improvement.
- (8) In cases involving an injury that occurred on or after July 1, 2014, and the authorized treating physician, selected by the employee from an initial panel, refers the employee for specialized care, the employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups to the employee pursuant to T.C.A. 50-6-204(a)(3)(A).
 - a. If a panel of three (3) specialists is provided, the employee shall select a provider from the panel and that provider shall become the employee's authorized treating physician.
 - b. For purposes of this section, receipt of the referral by the employer shall be accomplished whenever a copy of the referral is received at the employer or carrier's place of business by facsimile, email, post, hand delivery or commercial delivery service.

Authority: T.C.A. §§ 4-3-1409, 50-6-204, 50-6-233, 50-6-116, 50-6-419, and 50-6-118. Administrative History: Original rule filed December 22, 2014; effective date March 22, 2015. Repeal and new rule filed _____; effective _____.

0800-02-01-.07 Claims Form And Claims Resolution Filing Requirements

- (1) When forms are reproduced, they shall be reproduced in their entirety, including any instructions, and shall not be modified without written consent of the Administrator. A form may be revised by the Bureau at any time at the discretion of the Administrator and shall be made available by the Bureau at no cost.
- (2) Each adjusting entity shall file all required claims forms and claims resolution documents in accordance with Rules 0800-2-14 Claims Handling Standards.

Authority: T.C.A. § 50-6-419. New rule filed _____; effective _____.

0800-02-01-.08 Additional Forms

- (1) Any corporate officer who personally elects to be exempted from the Act shall file written notice of such election with the employer with a copy provided to the Bureau in accordance with the provisions of TCA §50-6-104 on Form I-6. Any corporate officer who had previously filed a Form I-6 and elects to revoke that decision and wishes to be covered by the Act shall immediately notify the employer and the Bureau on Form I-7.
- (2) Employers that are exempt from the Act and elect to be covered shall indicate that election by properly securing workers' compensation coverage. Such employers that subsequently wish to withdraw their acceptance of the provisions of the Workers' Compensation Law shall notify each of their employees affected by the withdrawal of the acceptance via certified mailing to the last known address of each affected employee at least ten (10) working days prior to canceling or not renewing the coverage. Such withdrawal shall not be effective until this notification has occurred.

- (3) An employee or prospective employee who wishes to waive compensation for claims arising out of aggravation or repetition of the conditions of heart disease, heart attack, or coronary failure or occlusion or who wishes to waive receipt of compensation for any aggravation of a specific identified occupational disease, pursuant to the provisions of the Act, or who are diagnosed as epileptics and who elect, pursuant to the provisions of the Act, not to be subject to the Act for injuries resulting because of epilepsy shall request the approval of the Bureau of the waiver on Form I-10, 11, 12. Requests for the revocation of a previously approved Form I-10, 11, 12 shall be furnished to the Bureau on Form I-13.
- (4) Common carriers who wish to provide workers' compensation insurance coverage under the Tennessee Workers' Compensation Law to a leased operator and/or a leased owner/operator shall notify the Bureau on Form I-14 & 16. Any such previously filed Form I-14 may be terminated by the leased operator, leased owner/operator, or common carrier by providing written notice of such termination to the Bureau and to all other parties on Form I-16.
- (5) General contractors who wish to provide workers' compensation insurance coverage under the Act to an individual subcontractor shall notify the Bureau on Form I-15. Such previously filed Form I-15 may be terminated by the subcontractor or general contractor by providing written notice of such termination to the Bureau on Form I-17.

Authority: T.C.A §§ 50-6-102; 50-6-104; 50-6-106; 50-6-106(5); 50-6-307; 50-6-213; and 50-6-902.

Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed _____; effective _____.

0800-02-01-.09 Medical Reports

A party, in lieu of a physician's deposition, may file a Standard Form Medical Report for Industrial Injuries- Form C-32 with the Administrator. The attending physician may charge a fee of up to One Hundred and Fifty Dollars (\$150.00) for completion and certification of the form.

Authority: T.C.A §§ 4-3-103; 4-3-1403; 50-6-101 et seq., 50-6-118; 50-6-126; 50-6-204; 50-6-235 and

4-5-202. *Administrative History:* Original rule filed February 19, 1987; effective April 5, 1987. Amendment filed March 5, 1993, effective April 19, 1993. Repeal and new rule filed _____; effective _____.

0800-02-01-.10 Civil Penalties

- (1) The Bureau shall assess and collect civil penalties as defined in the Bureau's Rules.
- (2) A violation of any Workers' Compensation Rule included in Chapters 0800-02 without a defined penalty may result in a civil penalty of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000), per violation.
- (3) Prior to assessing a civil penalty against a party, the Bureau shall provide the party appropriate written notice of any potential penalty(ies) and allow the party an opportunity to submit evidence of compliance with the applicable Rules. If compliance is not established, a civil penalty shall be assessed pursuant to the applicable rules. The Bureau's Rules shall be posted on the Bureau's website. Where a civil penalty is imposed pursuant to the applicable rules, the assessed party may request a contested case hearing under Rules 0800-02-13.
- (4) Uncontested penalties shall be paid within 20 days of the date of the Bureau's notice of assessment of penalty and in the form of a check or money order made payable to the Treasurer, State of Tennessee and submitted to the Administrator.
- (5) Unpaid penalties may be collected in a civil action in the name of the State of Tennessee in any court of competent jurisdiction.

Authority: T.C.A §§ 50-6-101 et seq., 50-6-102, 50-6-104; 50-6-106; 50-6-213; 50-6-307; 50-6-213.

Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed _____; effective _____.

0800-02-01-.11 Records/Copies

- (1) Workers' compensation settlement documents are public records.
- (2) Pursuant to T.C.A. §50-3-702(b) workers' compensation claims records are exempt from public disclosure.
- (3) Pursuant to T.C.A. §50-6-131 medical records held by the Bureau are not public records and are exempt from public disclosure or inspection.
- (4) Any person has a right to inspect public records. The right to "inspect" encompasses a right to view existing records and request a copy of them. It does not include a right to request searches for records not known to exist. Subject to an offer of employment, employers may request the Bureau to confirm the truthfulness of an applicant's answers regarding prior workers' compensation claims.
- (5) Copies of the Workers' Compensation records disclosable under state law may be obtained by written request made to:

Tennessee Bureau of Workers' Compensation
ATTN: Records' Custodian
220 French Landing Drive, 1-B
Nashville, Tennessee 37243-1002

- (6) Fees for researching and copying shall be ten dollars for the first twenty-five (25) pages and twenty-five cents (25¢) for each page after 25 pages.
- (7) The Bureau shall charge an additional fee of \$10.00 for certified records.
- (8) Payments of fees for records shall be made by credit card, check or money order payable to Treasurer, State of Tennessee and submitted to the Administrator. Payment in cash will not be accepted. Payment is due upon receipt of the requested material. Requestors will not be entitled to receive additional records until all payments for records provided within the previous sixty (60) days have been received.

Authority: T.C.A §§50-6-238; 50-6-131, New rule filed _____; effective _____.

0800-02-01-.12 Required Posting

- (1) Within five (5) business days of the date of the procurement or renewal of a policy, the adjusting entity is required to mail a copy of the Tennessee Workers' Compensation Posting Notice, available on the Bureau's website, via electronic mail or first class US Mail to the employer at the address provided on the policy. Failure to timely mail this form would subject the offending party to a potential penalty as described in 0800-02-01-.10(2).
- (2) Each employer is required to notify their employees of the services offered by the Bureau, the duties and obligations of the employer and employee and the name, address and telephone number employees may contact for additional information. This requirement shall be met by the continuous posting of the Tennessee Workers' Compensation Posting Notice, available on the Bureau's website, in one (1) or more conspicuous place(s) at each worksite.

Authority: T.C.A. §§50-6-407. New rule filed _____; effective _____.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State